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IN THE

Supreme Court of the United States

BANK OF AMERICA CORP., ET AL.,

Petitioners,

v.

CITY OF MIAMI, FLORIDA,

Respondent.

WELLS FARGO & CO. AND WELLS FARGO BANK, N.A.,

Petitioners,

v.

CITY OF MIAMI, FLORIDA,

Respondent.

On Writs of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF OF *AMICUS CURIAE* NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC., IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICUS CURIAE*[1]

The NAACP Legal Defense & Educational Fund, Inc. ("LDF") is the nation's first and foremost civil rights legal organization. Through litigation, advocacy, public education, and outreach, LDF strives to secure equal justice under the law for all Americans, and to break down barriers that prevent African Americans from realizing their basic civil and human rights.

Throughout its history, LDF has challenged policies that deny housing opportunities to African Americans. *See, e.g.*, *McGhee v. Sipes*, 334 U.S. 1 (1948) (companion case to *Shelley v. Kraemer*, 334 U.S. 1 (1948)) (racially restrictive covenants); *Cent. Ala. Fair Hous. Ctr., Inc. v. Lowder Realty Co.*, 236 F.3d 629 (11th Cir. 2000) (racial steering); *Comer v. Cisneros*, 37 F.3d 775 (2d Cir. 1994) (racial discrimination in public housing and assistance programs); *NAACP v. Am. Family Mut. Ins. Co.*, 978 F.2d 287 (7th Cir. 1992) (redlining); *Kennedy Park Homes Ass'n, Inc. v. City of Lackawanna*, 436 F.2d 108 (2d Cir. 1970) (exclusionary zoning); *Thompson v. U.S. Dep't of Hous. & Urb. Dev.*, 2006 WL 581260 (D. Md. Jan. 10, 2006) (federal government's obligation to affirmatively further fair housing); Consent Decree, *Byrd v. First Real Estate Corp. of Ala.*, No. 95-CV-3087 (N.D. Ala. May 14, 1998) (racial steering); Complaint, *Morningside, et al. v. Sabree, et al.*, No, 16-8807-CH (Mich. Cir. Ct., July 13, 2016) (discriminatory foreclosures).

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amicus curiae* state that no counsel for a party authored this brief in whole or in part and that no person other than *amicus curiae*, its members, or its counsel made a monetary contribution to the preparation or submission of this brief. All parties have consented to the filing of this brief.

LDF has also advocated for the fair and comprehensive interpretation and application of the Fair Housing Act of 1968, 42 U.S.C. § 3605 ("FHA" or "Fair Housing Act"). *See Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.*, 135 S. Ct. 2507 (2015) [hereinafter *Inclusive Communities Project*]; *see also* NAACP Legal Defense and Educ. Fund, Inc. et al., *The Future of Fair Housing: Report on the National Commission of Fair Housing and Equal Opportunity* (Dec. 2008).

INTRODUCTION AND SUMMARY OF ARGUMENT

The question of whether the City of Miami is an "aggrieved" person under the Fair Housing Act has a straightforward answer. More than four decades ago, the Court resolved that any party "aggrieved" may advance a claim under the Act, as long as they allege an injury cognizable under Article III of the United States Constitution. The Court has repeatedly affirmed that holding – and for good reason: It conforms with well-accepted principles of statutory interpretation that a term's plain meaning should control.

Petitioners now boldly summon this Court to ignore the FHA's unambiguous language and effectively overturn its precedent in order to *forbid* the City of Miami and the Black and Latino borrowers that live therein from attempting to stop and seek relief for banks' deceptive, predatory lending practices.

Petitioners cite no new amendments to the FHA or any case law under the statute, but rely entirely on a decision of the Court in the Title VII context, *Thompson v. North American Stainless, L.P.*, 562 U.S. 170 (2011). The lynchpin of Petitioners' argument is that *Thompson*'s conclusion that an interpretation of

Title VII that would preserve standing for all plaintiffs who have suffered an injury under Article III would lead to "absurd consequences" binds this Court's interpretation of the FHA, despite contrary precedent. Bank of America's Br. at 22 [hereinafter BOA's Br.]. Accordingly, Petitioners argue that the Court should jettison the City of Miami's claims at this preliminary stage in the case. *Id.* at 43.

There is nothing "absurd" about a city measurably damaged by discriminatory subprime lending and waves of attendant foreclosures pursuing relief under the FHA. Indeed, cities have long had a special stake and role in promoting fair housing and combating discrimination, as evidenced by the FHA's inception. However, it would be absurd to *refuse* to apply the term "aggrieved" to the straightforward facts of this case and to *bar* Miami from bringing suit.

It would be particularly unreasonable to dismiss this case given that the underlying malfeasance and the resulting damage to the City of Miami is not seriously disputed. As has been extensively documented, many financial institutions, including the Petitioners in this case, utilized, encouraged, and profited from deceptive predatory lending practices targeting African-American communities. For example, by 2008, 55 percent of African-American mortgage holders nationwide had high-risk, subprime loans, compared with only 17 percent of white mortgage holders.

As a result, African-American communities experienced specific and concrete financial and communal harms. Between 2005 and 2009, the median household income in communities of color decreased by two-thirds due in significant part to the subprime lending crisis. The spiraling rates of foreclosure and wealth erosion further entrenched

residential segregation and reduced economic mobility for persons living in African-American communities.

These practices had particularly stark impacts in Miami, which was decimated by the recession. The vicious cycle of foreclosures and devaluation continues to have a palpable effect on the City, whether in the form of lost tax revenue or costs related to the maintenance and rehabilitation of abandoned housing. The City's unique initiatives for promoting fair housing have also been deprived of resources because of the subprime crisis.

Yet, many of the African Americans harmed have never been able to enjoin these discriminatory practices, much less obtain relief under the FHA from the banks responsible for them. This is not because the lenders did not engage in malfeasance and mismanagement, which is not seriously in doubt. Nor is it because the lenders won on the merits or otherwise convinced a factfinder of their blamelessness. Rather, lenders have been able to defeat claims for relief due to a variety of procedural limitations, which have allowed them to trim back and terminate attempts to seek justice for the damage indisputably inflicted upon minority communities.

Against this backdrop, the City of Miami is engaging in a valuable effort to seek relief from the most egregious offenders for harm directly attributable to their actions. After being deceived, foreclosed upon, and forced from their homes – sometimes with no more than a few trash bags of belongings and their children in tow – the residents of Miami through their elected government deserve the chance to hold subprime lenders responsible for the natural consequences of their misconduct. In this case, the promise of justice boils down to a basic procedural right: the City's standing to pursue an action under the FHA.

ARGUMENT

This Court has repeatedly indicated that a statute should generally be interpreted according to its plain meaning, unless doing so would create an absurd or unjust result. Petitioners suggest that it would be "absurd" to *allow* "aggrieved" municipalities to sue under the FHA. In actuality, it would be absurd to *forbid* municipalities from seeking relief for predatory lending practices, in light of established precedents, the history and impact of predatory practices, and the ways that FHA actions have been hindered in lower courts.

I. DEFINING "AGGRIEVED" TO INCLUDE MUNICIPALITIES ACCORDS WITH THE FHA'S PLAIN MEANING AND THIS COURT'S PRECEDENT, AND DOES NOT CREATE AN ABSURD RESULT.

It is axiomatic that the plain meaning of a statute is generally the prime starting point in interpreting and applying the law. *See, e.g., United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 242 (1989); *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982). If the statutory terms are unambiguous, the Court's review generally ends and the statute is construed according to the plain meaning of its words. *See Rubin v. United States*, 449 U.S. 424, 430 (1981).

In certain instances, the Supreme Court has recognized that if a plain meaning interpretation would result in "unjust or absurd consequences[,]" the Court may consider those ramifications and "if possible . . . avoid[]" them. *Fleischmann Constr. Co. v. United States*, 270 U.S. 349, 360 (1926): *Hawaii v. Mankichi*, 190 U.S. 197, 213 (1903); *Lau Ow Bew v. United States*, 144 U.S. 47, 59 (1892).

In determining whether a result is unjust or absurd, the Court pays particular attention to Congress' intent in enacting the legislation: specifically, whether the interpretation proposed would contravene the statute's purpose. *See Fleischmann*, 270 U.S. at 360; *Holy Trinity Church v. United States*, 143 U.S. 457, 459 (1892); *Ozawa v. United States*, 260 U.S. 178, 194 (1922). As the Court explained in *Public Citizen v. U.S. Dep't. of Justice*, 491 U.S. 440 (1989):

> [T]he words used, even in their literal sense, are the primary, and ordinarily the most reliable, source of interpreting the meaning of any writing[.] [N]evertheless[,] it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary . . . but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning.

Id. at 454-55.

The Court applied this canon in *Thompson v. North American Stainless*, when determining that Title VII protected an employee who was fired after his spouse filed a claim with the Equal Employment Opportunity Commission against their common employer. 562 U.S. at 170. Although the text of Title VII states that any "aggrieved" party may seek relief under the Act, the Court concluded that if the right to sue extended to all persons who would otherwise have standing under Article III, "absurd consequences would follow." *Id.* Accordingly, the Court "conclude[d] that the term 'aggrieved' must be construed more narrowly than the outer boundaries of Article III." *Id.* at 177. Nonetheless, the Court held that the employee fell

within the statute's "zone of interests" and, thus, had standing as an aggrieved party. *Id.* at 176-77.

Petitioners aim to couch this case entirely in terms of the limitations of *Thompson*, in the hopes of cabining the scope of the term "aggrieved" – this time in the context of standing under the FHA. This argument misses three important points.

First, as the Court in *Thompson* explicitly acknowledged, the Court has repeatedly reiterated that standing under the FHA, unlike Title VII, reaches as far as Article III permits. 562 U.S. at 177. As the Court held in *Trafficante v. Metropolitan Life Insurance*, Congress' use of the word "aggrieved" "showed 'a congressional intention to define standing as broadly as is permitted by Article III of the Constitution.'" 409 U.S. 205, 209 (1972). The Court affirmed this holding in *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91 (1979) and again in *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982). Accordingly, to now hold otherwise would not only conflict with the term's plain meaning, but run counter to this Court's stated precedent.

Second, even if this Court were to find that the FHA does not extend to all parties who have suffered an Article III injury, the City of Miami's claim, in accordance with *Thompson*, falls within the FHA's "zone of interests." The Fair Housing Act was explicitly enacted to address problems plaguing cities and provide relief for harms to communities of color in cities – the type of harms at issue in this case. *See infra* at 32-33. That lenders directly targeted African-American communities in cities for predatory loans further supports this conclusion.

Third, unlike *Thompson*, an absurd consequence would not result from a plain meaning interpretation

of "aggrieved" party, since maintaining the City of Miami's ability to pursue FHA violations is an entirely appropriate response to predatory lending and other deceptive and discriminatory practices, which caused grave harms to the City. *Infra* Section II. Compounding matters, predatory lending in the City often targeted and disparately impacted African-American communities – the very group that the FHA was intended to protect and benefit. *See, e.g., Inclusive Communities Project*, at 2515-16. (recounting the history of segregation and discrimination against Blacks in housing that led to the FHA's passage).

Moreover, the consequences of the plain text, and Miami's action thereunder, are perfectly reasonable because cities have a special stake in and role under the FHA and are uniquely positioned to request and implement special forms of relief to combat discrimination and promote fair housing. The salience and sensibility of municipal FHA claims is further strengthened by the fact that the victims of predatory practices have been largely unable to stop or obtain meaningful remedies, due primarily to a variety of procedural barriers. This further reaffirms the importance of adhering to the plain meaning of the FHA and allowing an avenue for relief to remain intact. *Infra* Section 3.

II. PREDATORY LENDING SERIOUSLY DAMAGED COMMUNITIES OF COLOR, INCLUDING IN THE CITY OF MIAMI.

As this Court analyzes the meaning of the FHA, and the scope of the injuries alleged here, it important to situate these legal issues within the unique historical context from which they arose.

While the devastation of the financial crisis of 2007 and 2008 is a matter of public record and common knowledge, it bears repeating that this was no ordinary recession; nor was it simply a cyclical dip in economic growth. Rather, the crisis was integrally intertwined with specific acts of malfeasance by certain financial institutions, building upon a legacy of enduring racial discrimination, whereby the private and public sectors worked hand in hand to further residential segregation and then profit from it.

While Petitioners advance an unfounded interpretation of the law, as if writing on a blank slate, *see* BOA's Br. at 6, the reality is that history and the Court's precedent interpreting the FHA matters here. As this Court applies the established doctrine of FHA standing, LDF urges the Court to carefully consider (A) the modern history that led to the foreclosure crisis; (B) the record of misconduct and exploitation by certain financial institutions; and (C) the severe, collective, and multi-generational harms to communities of color that these actions caused.

A. Modern History of Housing Discrimination

During the early twentieth century, federal, state, and local governments expressly enforced and subsidized systemic *de jure* racial segregation. *See generally*, Douglas S. Massey & Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* (1993). Federal officials divided cities by race through the use of "redlining," *id.* at 51-52, a process where the government would literally code predominantly African-American areas on a map with red ink to indicate areas where the government refused to lend. Benjamin Howell, *Exploiting Race and Space: Concentrated Subprime Lending as Housing Discrimination*, 94 Calif. L. Rev. 101, 107-08

(2006). The result was that properties in minority and racially mixed neighborhoods were significantly undervalued. Massey & Denton, *supra* at 51-52.

The Federal Housing Administration also required developers seeking federal financing to include racially restrictive covenants in their deeds, thereby preventing the sale or re-sale – or forcing developers to prevent the sale or re-sale – of new homes to Blacks. *See* Richard Rothstein, *Race and Public Housing: Revisiting the Federal Role*, 21 Poverty & Race Res. Action Council 2 (Nov.-Dec. 2012).

In tandem, the private sector developed and enforced a variety of discriminatory policies and practices, resulting in African-American communities throughout the country being denied conventional forms of credit – and helping create the highly segregated housing patterns that remain visible today. Stephen Trzcinski, *The Economics of Redlining: A Classical Liberal Analysis*, 44 Syracuse L. Rev. 1197, 1199 (1993). For example, although government agencies promoted home building and greater access to private mortgage loans, they also used race as a benchmark for housing credit eligibility. *See* John Charles Boger & Judith Welch Wegner, *Race, Poverty, and American Cities* 324 (Univ. of N.C. Press 1996). As a result, Blacks were denied the opportunity to secure financing and achieve homeownership. *See* Douglas S. Massey, *Origins of Economic Disparities, in The Rising Costs for America* 39, 69 (James H. Carr & Nadinee K. Kutty eds., 2008).

This combination of racially discriminatory government policies and private sector prejudice obstructed residential mobility for Blacks and allowed "segregation [to] continue[] unabated" through the early 1960s. Ira Rheingold et al., *From Redlining to Reverse Redlining: A History of Obstacles for Minority*

Homeownership in America, 34 Clearinghouse Rev. 642, 645 (2001). Thus, while the overall homeownership rate in the United States increased from 43.6 percent in 1940 to 62 percent in 1960, that increase inured exclusively to the benefit of the white middle class. Mechele Dickerson, *Home Ownership and America's Financial Underclass: Flawed Premises, Broken Promises, New Prescriptions* 181 (2014). The resultant "residential spatial segregation in America's cities has contributed to the growth of an African-American underclass that threatens to make urban poverty and racial injustice a permanent fixture of American society." John P. Relman, *Foreclosures, Integration, and the Future of the Fair Housing Act*, 41 Ind. L. Rev. 629, 641 (2008) [hereinafter Relman, *Foreclosures*] (citing Massey & Denton, *supra*).

Following Congress' deregulation of the mortgage industry in the 1980s,[2] subprime loans – which, traditionally, were rare financing options for high-income borrowers[3] – were repurposed into predatory loan products[4] to exploit the market vacuum created

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[2] "Among the statutes that deregulated the mortgage banking industry were the Depository Institutions and Monetary Control Act of 1980 . and the Alternative Mortgage Transactions Parity Act of 1982[.]" Ira Rheingold et al., *supra*, at 648 n.47 (citation omitted).

[3] Gene Amromin et al., *Complex Mortgages* 1-2, Stanford Inst. for Econ. Pol'y Research (May 2012) (explaining how subprime mortgage loans can serve as "a security design that benefits sophisticated borrowers[,]" but acknowledging that these types of loans are also "pushed by financial institutions to take advantage of naive households").

[4] Subprime lending that is not targeted towards specific groups can be a legitimate practice that provides borrowers deemed ineligible for prime financing the opportunity to achieve

by the lack of financing opportunities in historically underserved communities of color. Rheingold et al., *supra* at 648. In short, the move towards unregulated mortgage lending created an attractive market out of formerly excluded communities of color, and allowed housing discrimination to simply shift "from the outright denial of home loans to the systematic marketing of predatory loans to poor black and Hispanic households." Jacob S. Rugh & Douglas S. Massey, *Racial Segregation and the American Foreclosure Crisis*, 75 Am. Soc. Rev. 629, 632 (2010).

B. Malfeasance, Exploitation, and the Subprime Crisis

Out of this history, a number of major lenders developed and aggressively pushed forms of "reverse redlining," which impermissibly marketed high-risk, subprime loans, "offering easier and faster approvals" to unsuspecting borrowers of color while downplaying the exorbitant costs that would later be exacted through inflatable interest rates, balloon payments, negative amortization features, and/or stricter repayment terms. *See* Rick Brooks & Ruth Simon, *Subprime Debacle Traps Even Very Credit-Worthy*, Wall Street J., Dec. 3, 2007, at A1.

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homeownership through higher-priced or otherwise inferior loan products. Kathleen C. Engel & Patricia A. McCoy, *A Tale of Three Markets: The Law and Economics of Predatory Lending*, 80 Tex. L. Rev. 1255, 1258 (2002). A predatory loan, on the other hand, is not simply higher-priced, but also contains abusive terms and conditions that predictably harm the borrower or a class of borrowers – e.g., excessively high and inflatable interest rates, hidden fees, and undisclosed costs. Sumit Agarwal et al., *Predatory lending and the subprime crisis*, 113 J. Fin. Econ. 29, 29 (2014). In reality, predatory lending occurs most frequently in the subprime mortgage market. Engel & McCoy, 80 Tex.L.Rev. *supra*, at 1261.

It is well-documented that several regional and national financial entities engaged in exploitative conduct and racial steering in the pursuit of short-term profits. In the late 1990s and early 2000s, banks charged Black homebuyers higher interest rates than similarly situated white homebuyers. Richard Rothstein, *Racial Segregation and Black Student Achievement, in Education, Justice and Democracy* 187 (Danielle Allen & Rob Reich eds., Univ. of Chi. Press 2013). By 2002, African Americans were three times as likely to receive a high-risk, subprime loan than similarly-qualified white loan applicants. *Id.* at 188. By 2008, 55 percent of African-American mortgage holders nationwide had high-risk, subprime loans, compared with only 17 percent of white mortgage holders. *Id.* at 189; *see also,* Eric S. Belsky & Ren S. Essene, *Consumer and Mortgage Credit at a Crossroads: Preserving Expanded Access while Informing Choices and Protecting Consumers* 21–22, Harvard Univ. Joint Ctr. for Hous. Studies (2008) (describing "a dual market" where minority communities are served by different "institutions, arrangements and products" than white areas).

Studies that control for income, credit score, and other risk variables consistently show that borrowers of color were and continue to be disproportionately steered into predatory high-risk loans. *See, e.g.*, Robert G. Schwemm & Jeffrey L. Taren, *Discretionary Pricing, Mortgage Discrimination, and the Fair Housing Act*, 45 Harv. C.R.-C.L. L. Rev. 375, 399-400 (2010); Carolina Reid & Elizabeth Laderman, *The Untold Costs of Subprime Lending: Examining the Links among Higher-Priced Lending, Foreclosures and Race in California* 7, Inst. for Assets & Soc. Pol'y, Brandeis Univ. (2009); Monique W. Morris, NAACP, *Discrimination and Mortgage Lending in America; A*

Summary of the Disparate Impact of Subprime Mortgage Lending on African Americans (March 2009).

Indeed, as one moves up the income scale, the racial disparity becomes increasingly pronounced. *See* Dep't of Housing & Urban Dev., Subprime Lending Report, *Unequal Burden: Income and Racial Disparities in Subprime Lending in America* (Apr. 2000), http://archives.hud.gov/reports/subprime/subprime.cfm (last visited Oct. 6, 2015); *see also id.* ("Homeowners in high-income black neighborhoods are twice as likely as homeowners in low-income white neighborhoods to have subprime loans.").[5] These startling disparities were certainly no accident: Lenders specifically "target[ed] historically disadvantaged communities with high-cost and risky loan products." Debbie Grunstein Bocian, Wei Li & Carolina Reid, Center for Responsible Lending, *Lost Ground, 2011: Disparities in Mortgage Lending and Foreclosure* 8 (November 2011).

A strong undercurrent of prejudice is unmistakable in these predatory practices. According to a loan officer's affidavit, fellow loan officers used racial slurs in characterizing subprime loans to African Americans, who they referred to as "mud people" receiving "ghetto loans." Michael Powell, *Banks Accused of Pushing Mortgage Deals on Blacks*, N.Y. Times, June 6, 2009, at 1. In Florida, for example, there were also accounts of "subprime lenders bragging that their ideal client [wa]s an elderly widow

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[5] These disparities persist even after accounting for the characteristics of the applicant, loan, or property – with race providing the only plausible explanation. *See, e.g.*, Alan M. White, *Borrowing While Black: Applying Fair Lending Laws to Risk-Based Mortgage Pricing*, 60 S.C. L. Rev. 677, 681 (2009).

with credit problems," which they referred to as "granny shopping." Michelle Singletary, *Subprime Loan Epidemic Preys On Poor, Minority Homeowners*, Sun Sentinel (July 3, 2000), http://articles.sun-sentinel.com/2000-07-03/business/0006300849_1_subprime-consumer-debt-credit-card.

These exploitative loans proliferated exponentially. In the five years between 1994 and 1999, the subprime mortgage market expanded from $35 billion to $160 billion,[6] and by 2007, totaled approximately $650 billion, "roughly 25 percent of the overall mortgage market." Maurice Jourdain-Earl, *The Demographic Impact of the Subprime Mortgage Meltdown* 4, ComplianceTech, http://www.compliancetech.com/files/Demographic%20Impact%20of%20the%20Subprime%20Mortgage%20Meltdown.pdf. The loans were further fueled by highly questionable securitization and underwriting practices, which obscured the quality of the underlying loans and the chances of default once those loans were packaged together into novel financial products. *See generally*, Michael Lewis, *The Big Short: Inside the Doomsday Machine* (W.W. Norton & Co. 2011). At the height of the boom, there were upwards of 4.58 million outstanding subprime loans,[7] which became

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[6] Rheingold et al., *supra*, at 651 ("If there is any question about where this lending is taking place, it has been answered by a series of recent studies, which supplied ample evidence that low- and moderate-income minority communities are being targeted and devastated by subprime lenders.").

[7] Government Accountability Office, Nonprime Mortgages: Analysis of Loan Performance, Factors Associated with Defaults, and Data Sources, Report to the Joint Economic Committee, United States Congress (2010), http://www.gao.gov/new.items/d10805.pdf.

increasingly likely to be delinquent and often focused on neighborhoods where payday loan stores were subsequently situated.[8]

The exploitative nature of these subprime loans and the harms that would flow from foreclosures were reasonably foreseeable, particularly to senior bank officials who had the most knowledge about their own loans and financial products. *See generally*, Wall Street and the Financial Crisis: Anatomy of a Financial Collapse: Majority and Minority Staff Report, Permanent Subcommittee on Investigations, United States Senate 50 (Apr. 13, 2011) ("[A] host of financial institutions . . . knowingly originated, sold, and securitized billions of dollars in high risk, poor quality home loans . . . ."); Kathleen C. Engel & Patricia A. McCoy, *The Subprime Meltdown: Who Knew What When*, Federal Reserve of Boston, Fall 2010, at 17 (describing warning signs and how "[t]he private mortgage industry also knew of the issues"); James R. Hagerty & Joseph T. Hallinan, *Blacks are Much More Likely to Get Subprime Mortgages*, Wall Street J., Apr. 11, 2005.

C. Harms to Communities of Color, Including in the City of Miami

When these predatory practices all came crashing down, the damage was predictably severe for communities of color. The disproportionate impact of the lending crisis was "precisely because of the illegal reverse redlining practices of clearly identifiable financial institutions who targeted these communities

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[8] Sarah D. Wolff, Center for Responsible Lending, The Cumulative Costs of Predatory Practices (June 2015), http://www.responsiblelending.org/state-of-lending/reports/13-Cumulative-Impact.pdf.

as a means to maximize short term profits[.]" Relman, *Foreclosures, supra* at 630.

This disproportionate impact caused serious damage along three dimensions that are relevant to the case at bar: 1) a massive reversal of home ownership rates and an erosion in African-American wealth; 2) an entrenchment of residential segregation and reduction in economic mobility; and 3) the sheer human cost of foreclosures on children, families, and the elderly.

1. Destruction of African-American Wealth

First, the subprime loans and the foreclosure crisis they triggered caused a massive reversal in minority homeownership rates and an erosion in African-American wealth. As the crisis unfolded, over 2.8 million homes were lost to foreclosure in 2009 alone – a "120 percent increase in total properties from 2007." Daren Blomquist, *A Record 28 Million Properties Receive Foreclosure Notices in 2009*, http://www.realtytrac.com/landing/2009-year-end-foreclosure-report.html (last Oct. 6, 2016); *see also* Katalina M. Bianco, *The Subprime Lending Crisis: Causes and Effects of the Mortgage Meltdown*, CCH Mortgage Compliance Guide & Bank Digest 12 (2008) ("The prevalence of subprime loans contributed to a 31-percent spike in foreclosure filings in the first half of 2006."). The massive increase in nationwide foreclosure filings correlates with the foreclosure rate on subprime loans, which soared "from 3.3 percent in 2005 to 15.6 percent in 2009." Rugh & Massey, *supra* at 634. The financial consequences of these foreclosures have been devastating: High-risk subprime loans originated between 1999 and 2007 have cost borrowers of color collectively "between $164 billion and $213 billion." Melvin L. Oliver, *Subprime as a Black Catastrophe*, The American Prospect, Sept.

20, 2008, http://prospect.org/article/sub-prime-black-catastrophe.

The result was stark: "[T]he group with the smallest percentage of homeownership, African Americans, had the greatest dive in homeownership rates." Aleatra P. Williams, *Lending Discrimination, the Foreclosure Crisis and the Perpetuation of Racial and Ethnic Disparities in Homeownership in the U.S.*, 6 Wm. & Mary Bus. L. Rev. 601, 618 (2015).

This had devastating implications for wealth accumulation. According to the Secretary of Housing and Urban Development, the subprime lending crisis was particularly devastating to African-American wealth accumulation nationwide:

> "[B]etween 2005 and 2009, fully two-thirds of median household wealth in [communities of color] was wiped out. From Jamaica, Queens, New York, to Oakland, California, strong, middle class African American neighborhoods saw nearly two decades of gains reversed in a matter of not years – but months."

Shaun Donovan, *Prepared Remarks of Secretary Shaun Donovan During the Countrywide Settlement Press Conference*, U.S. Dep't of Hous. & Urban Dev., Press Room (Dec. 21, 2011). *See also* Rugh & Massey, *supra* at 633 ("[S]egregation and the new face of unequal lending combined to undermine black residential stability and erode any accumulated wealth.").

These plummeting fortunes stemmed from the fact that wealth accumulation and home equity are intrinsically linked. "Home ownership is without question the single most important means of accumulating [wealth]." Melvin L. Oliver & Thomas

Shapiro, *Black Wealth White Wealth: A New Perspective on Racial Inequality* 8 (1995). Moreover, home equity "represents a much larger share of the net worth of the typical black or Hispanic homeowner (58 percent) than of the typical white homeowner (37 percent)." Joint Ctr. for Hous. Studies, Harvard Univ., *The State of the Nation's Housing: 2015* 17 (2015). Yet, widening wealth disparities along racial lines are "a direct consequence of discrimination in credit markets which [act] to both limit minorities' access to home ownership and to increase the cost of achieving home ownership." Charles Lewis Nier III, *The Shadow of Credit: The Historical Origins of Racial Predatory Lending and its Impact Upon African American Wealth Accumulation*, 11 U. Pa. J.L. & Soc. Change 131, 194 (2013).

The foreclosure crisis also exacerbated other financial pressures. Because people of color bear a disproportionate share of the subprime debt burden, they incur much higher housing costs than similarly situated families in white neighborhoods. *See* Michael S. Barr et al., *Behaviorally Informed Home Mortgage Credit Regulation* 31, Harvard Univ. Joint Ctr. for Hous. Studies (2008). These higher costs divest minorities of wealth and home equity, as they often require families with small incomes to scramble to meet higher interest rates and skyrocketing fees. *See* Frank Lopez, *Using the Fair Housing Act to Combat Predatory Lending*, 6 Geo. J. on Poverty L. & Pol'y 73, 76 (1999) ("[R]everse redlining practices have milked the last drops of wealth from minority neighborhoods . . . ."). Predatory subprime lending thus forces "African Americans to devote more of their incomes to housing to the detriment of other basic necessities, including education, medical care, food, clothing, home improvements and recreation." Nier, *supra* at 190.

2. Entrenchment of Segregation and Economic Immobility

Second, the spiraling rates of foreclosure and wealth erosion further entrenched residential segregation and reduced economic mobility. This is precisely because foreclosures do not just affect an individual homeowner – they reduce nearby property values. Various studies confirm that foreclosures impose financial and social harms on *neighboring* homes within the same community, including declines in property values; large drops in property tax revenue; additional costs for municipal services and to process foreclosed properties; massive drains of capital and home equity; and worsening patterns of entrenched racial segregation. *See* Relman, *Foreclosures*, *supra* at 645-46; *see also* Ira Goldstein, *Bringing Subprime Mortgages to Market and the Effects on Lower-Income Borrowers* 22, Harvard Univ. Joint Ctr. for Hous. Studies (2004) ("Estimates of the impact of a mortgage foreclosure on surrounding [property] values can be as much as 20%.").

According to another study, the price of a single-family home decreases with every nearby foreclosure, on average, by 0.9 percent, and declines steadily further with each additional foreclosure. Dan Immergluck & Geoff Smith, *The External Costs of Foreclosure: The Impact of Single-Family Mortgage Foreclosures on Property Values*, 17 Housing Pol'y Debate 57, 57 (2006) (estimating foreclosures in Chicago in 1997 and 1998 "reduced nearby property values by more than $598 million, for an average of $159,000 per foreclosure"); *see also* W. Scott Frame, *Estimating the Effect of Mortgage Foreclosures on Nearby Property Values: A Critical Review of the Literature*, Econ. Rev., no. 3, 2010, at 6 (noting "properties in some stage of foreclosure depress sales

prices" of neighboring non-foreclosed homes); Tammy Leonard & James Murdoch, *The Neighborhood Effects of Foreclosure*, 11 J. Geographical Sys. 317, 332 (2009) (finding a foreclosure within 250 feet causes a 0.5 decline in the value of neighboring homes in Dallas County, Texas); Zhenguo Lin et al., *Spillover Effects of Foreclosures on Neighborhood Property Values*, 38 J. Real Est. Fin. & Econ. 387, 407 (2009) (finding a foreclosure can cause as high as an 8.7 percent drop in the price of homes located within ten blocks of the foreclosed property).

Additionally, the subprime foreclosure crisis has stripped thousands of Black households of much needed equity and capital that "would allow them to move out of poorer, segregated neighborhoods" and into integrated communities. Relman, *Foreclosures*, *supra* at 650. Moreover, once a foreclosure occurs, it has lasting collateral consequences upon credit scores, further limiting access to capital and the ability to build wealth. *See e,g.*, Ylan Q. Mui, *For Black Americans, Financial Damage from Subprime Explosion Is Likely to Last*, The Wash. Post, July 8, 2012 ("[C]redit scores of black Americans have been systematically damaged, haunting their financial futures.").

Perceptions associated with foreclosures have further deterred residential and capital investment in minority neighborhoods. *Id.* And, "an epidemic of foreclosures among African American and Hispanic homeowners . . . exacerbat[es] racial segregation as displaced families relocate to more racially isolated neighborhoods or suffer homelessness." Richard Rothstein, *A Comment on Bank of America/Countrywide's Discriminatory Mortgage Lending and Its Implications for Racial Segregation*,

Econ. Pol'y Inst., Briefing Paper Bo. 335, Jan. 23, 2012, at 1.

3. The Human Cost of the Foreclosure Crisis in Miami

In cities like Miami, the foreclosure crisis has fallen particularly hard on minority communities, with distressing and destructive impacts at the most basic human level. "In past recessions, Miami was hit fairly lightly. This time it's been decimated." Douglas Hanks, *Report: South Florida Area Among Hardest Hit by Recession*, Sun Sentinel, June 16, 2010, http://articles.sunsentinel.com/2010-06-16/business/fl-south-florida-economy-mh-20100616_1_south-florida-past-recessions-first-recession.

This most recent economic recession has had real consequences for individual families, their ability to live in a habitable dwelling, and their intrinsic dignity. The human face of foreclosures and evictions in south Florida is a young mother of three "carrying large garbage bags out of a second-story apartment," because "she had fallen behind in paying the $1,450 a month in rent and her landlord could no longer afford the mortgage and condominium fees, pushing the property toward foreclosure." Damien Cave, *In South Florida, Eviction Spares Few*, N.Y. Times, June 4, 2008. "The situation is bad for everyone – me [and] the landlord," she noted, explaining that she still had to turn to relatives for financial help. *Id.*

Also put in an untenable position are law enforcement officers forced to conduct endless evictions and families who sublet their homes to make ends meet. A Miami-Dade police officer noted that the hardest evictions involve older homeowners, since many have been victimized by predatory loans or forged paperwork – "[i]t's tough," he added, because

"[y]ou think of them as your grandmother or grandfather." *Id.* In another, all-to-common scene, a 71-year Hispanic homeowner approached her tenants who had fallen behind on rent and "begged for mercy" as "tears streamed down" in "a dark, sparsely furnished living room." The homeowner explained her own difficulty in keeping up with mortgage payments as she too began to cry before granting yet another month extension, since "[w]e know these are hard times." *Id.*

Blocks replete with empty houses have also led some homeless families to "squat" in foreclosed homes. In one Miami neighborhood, a mother who had been "homeless off and on for a year, after losing various jobs and getting evicted from several apartments," moved with her toddler into a vacant house that had been foreclosed upon. Associated Press, *As Foreclosures Rise, Squatters Lay Claims*, Dec. 2, 2008. She described her choice: "My heart is heavy. I've lived in a lot of different shelters, a lot of bad situations . . . In my own home, I'm free. I'm a human being now." *Id.*

Although the crisis officially subsided several years ago, the vicious cycle of foreclosures and devaluation continues to have a palpable effect in Miami. *See generally,* Miami Government, *Housing Market Analysis*, http://www.miamigov.com/communitydevelopment/Docs/Reports/MarketAnalysis12714DRAFT.pdf. In addition to "great repercussions to the city [in] terms of lost tax revenue, [predatory lending inflicted new] cost[s] in maintaining abandoned properties, as well as other consequences that come from the destabilization of neighborhoods." *Id.* at 59. For example, due to the City's diminished revenues, it "is vulnerable to ongoing losses of affordable housing stock, especially low-rent housing stock." *Id.* at 16.

This has frustrated the City's interests and policies in several ways. *Infra* section III.B.

Despite this well-documented history of malfeasance, precious few have been able to enjoin or seek relief for these practices. As discussed below, efforts to seek redress for such acts under the FHA have been largely stymied.

III. THE ABSENCE OF MEANINGFUL RELIEF FOR COMMUNITIES AND CITIES RAVAGED BY PREDATORY LENDING COMPELS A FAIR AND COMPREHENSIVE INTERPRETATION OF THE FHA CONSISTENT WITH ITS PLAIN TERMS.

In light of the devastating damage that predatory lending inflicted upon millions of Americans, particularly communities of color, there have been a number of actions brought under the FHA since the subprime crisis. Unfortunately, notwithstanding these various attempts, predatory lenders have benefited from significant procedural and substantive obstacles that have prevented individuals and classes from seeking relief. Given this history, as well as their unique role, it is not an absurd consequence to apply the plain meaning of the statute which clearly confers standing upon municipalities.

A. Individuals and Classes Face Significant Obstacles in Pursuing Relief from Predatory Lenders.

Petitioners and their *amici* allege that were this case allowed to proceed past the motion to dismiss stage, banks would somehow face "infinite" hypothetical liability, "stretching as far as the imagination." Wells Fargo Br. 42.

The argument ignores the significant procedural and substantive limitations on liability for banks for predatory conduct. In reality, in a variety of cases across the country, financial institutions have managed to defeat a whole host of claims about predatory subprime practices. A basic survey of two streams of litigation not only demonstrates that Petitioners' arguments are misguided, but also reaffirms how difficult it is for victims to seek relief for predatory lending practices. This further confirms the special interest and role of cities in seeking meaningful city-wide relief for violations of the FHA.

First, individuals alleging that a financial institution discriminated on the basis of race in violation of the FHA regularly face significant procedural obstacles. In particular, unless individual plaintiffs possess concrete information that their claim was part of a larger discriminatory scheme, they must file suit within two years of the discriminatory act. 42 U.S.C. § 3613(a)(1)(A).

Because a default or foreclosure can occur many years after the date a plaintiff entered into a discriminatory loan transaction, individuals can find that by the time of default or foreclosure, their claims are already time-barred. *See, e.g., Gordon v. First Franklin Fin. Corp.*, 2016 WL 792412, at *9 (E.D.N.Y. Feb. 29, 2016) ("As the alleged discriminatory practice occurred in September 2006, [African-American] plaintiff's discrimination claim, asserted more than eight years thereafter, is time-barred."); *Chiu v. BAC Home Loans Servicing, LP*, 2012 WL 1902918, at *5 (D. Nev. May 25, 2012) (finding that because Asian-American woman's FHA "claim [was] barred by the statute of limitations, which is two years . . . the claim must be dismissed without leave to amend"); *Johnson v. Wells Fargo Bank, N.A.*, 2014 WL 4197001, at *13

(Bankr. E.D.N.Y. Aug. 22, 2014) (noting that "the continuing violation doctrine is heavily disfavored in the Second Circuit;" equitable tolling is a high bar to meet; and ultimately finding plaintiff's claim was time-barred when commenced "more than two years after he entered into his home loan"); *Cervantes v. Countrywide Home Loans, Inc.*, 2009 WL 3157160, at *6-*7 (D. Ariz. Sept. 24, 2009), *aff'd*, 656 F.3d 1034 (9th Cir. 2011) (finding that because Latino "[p]laintiffs obtained their loans in 2006 and brought this present action in March 2009[,]" their "claims fall outside the two-year time limitation": "Even if the Court assumed that Defendants' actions violated the FHA, the discriminatory act took place at the time Defendants extended the loan to Plaintiffs.").

As a result, plaintiffs often have no option but to undertake the difficult task of proving that their predatory loan was part of a larger discriminatory scheme. For example, in *McKinney v. Citi Residential Lending Inc.*, 2015 WL 11822150 (S.D. Cal. Dec. 8, 2015), an African-American bishop alleged Citi Lending discriminated against him on the basis of his race, *inter alia*, by giving him a loan with an "interest rate and origination fee that were higher than usual." Citi Lending moved to dismiss, stating McKinney's action was barred by the FHA which requires claims to be brought within "2 years after the occurrence or termination of an alleged discriminatory housing practice," *id.* at *9, unless "a plaintiff alleges a 'pattern or practice of discrimination, [in which case] the statute of limitations runs from the last asserted occurrence.'" *Id.* (citing *City of Los Angeles v. Citigroup, Inc.*, 24 F. Supp. 3d 940, 951 (C.D. Cal. 2014)).

Mr. McKinney alleged that his 2008 loan was part of a greater scheme of discriminatory lending. 2015 WL

11822150 at *9; *see also id.* at *9 n.16 (situating his loan in a greater context by referencing the contemporaneous litigation against CitiMortgage, among others, in neighboring Los Angeles). The district court, however, granted the lender's motion to dismiss because the loan in question occurred over seven years before the filing of the complaint, and the plaintiff failed to demonstrate his case was part of a larger practice by the specific defendant in the particular county in which Mr. McKinney lived. *Id.*

In addition to these sorts of procedural hurdles, individuals face significant substantive obstacles in challenges to lenders.

For instance, in *Steed v. EverHome Mortgage Co.*, 477 F. App'x 722 (11th Cir. 2012), an African-American man sued his mortgage lender for various FHA violations following the foreclosure of his home. The Eleventh Circuit affirmed the lower court's dismissal, finding that the plaintiff failed to make a *prima facie* case of race discrimination. *Id.* at 727. The Court of Appeals reasoned that Steed's own evidence plus "the affidavits of three other African–Americans" complaining of the same practices by the same lender in the same neighborhood, could not prove "a pattern of servicing practices that target African Americans . . . or have a disparate impact on African Americans." *Id.* at 726-27.

The Eleventh Circuit's ruling only underscores that individual plaintiffs, standing alone, can present compelling evidence of individual injury, but may still lack the numbers, resources, or sophisticated

statistical data necessary to show a systemic problem of discrimination on the part of financial institutions.[9]

In the class action context, plaintiffs often find themselves similarly shut out from holding banks accountable for discriminatory lending, particularly after *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011). In recent years, successfully bringing class action litigation under the FHA against financial institutions has become a near-insurmountable hurdle.[10]

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[9] Indeed, "the most common method" used to establish a discriminatory pattern or practice or disparate impact under the FHA "is to provide statistical evidence that reveals disparities between the protected group and others." Jamie Duitz, *Battling Discriminatory Lending: Taking A Multidimensional Approach Through Litigation, Mediation, and Legislation*, 20 J. Affordable Hous. & Cmty. Dev. L. 101, 114 (2010).

[10] Since *Wal-Mart*, courts have denied class certification in several class action FHA cases. *See, e.g., In re Wells Fargo Residential Mortg. Lending Discrimination Litig.*, 2011 WL 3903117, at *2, *4 (N.D. Cal. Sept. 6, 2011) (finding where loan officers "who are afforded discretion exercise that discretion differently, commonality is not established" and citing to *Wal-Mart* in support of conclusion, in case where plaintiffs alleged that the very "discretionary elements to Wells Fargo's loan pricing have a widespread discriminatory impact on minority applicants for home mortgage loans"); *Rodriguez v. Nat'l City Bank*, 2011 WL 4018028, at *5-7 (E.D. Pa. Sept. 8, 2011) (finding class failed to establish "commonality" and denying final approval of a settlement, where court had preliminarily approved a classwide settlement and final approval was pending when *Wal-Mart* was decided); *In re Countrywide Fin. Mortg. Lending Practices Litig.*, 2011 WL 4862174 (W.D. Ky. Oct. 13, 2011) (denying class certification in case by Black and Latino home-buyers challenging discretionary pricing policy, stating "[t]he *Wal-Mart* decision makes clear that, absent a showing of a common direction or common method of exercising discretion,

For example, in *Barrett v. Option One Mortgage Corp.*, the court certified a class of African Americans who received home-mortgage loans, only to reverse its decision the following year. *Compare Barrett v. H & R Block, Inc.*, 2011 WL 1100105, at *2 (D. Mass. 2011), *with Barrett v. Option One Mortg. Corp.*, 2012 WL 4076465 (D. Mass. Sept. 18, 2012).[11] Initially, the district court found that the plaintiff class established a *prima facie* case of disparate impact based in part on an expert report showing that African-American borrowers paid higher interest rates than similarly situated white borrowers. *H & R Block*, 2011 WL 1100105, at *2. But just one year later, in light of *Wal-Mart*, the district court reconsidered class certification and determined that the expert data presented regarding the lenders' nationwide predatory practice was no longer sufficient to establish commonality. *Id.*

B. Cities and Counties Are Uniquely Positioned to Hold Lenders Accountable for Discrimination.

Viewed in isolation, failed challenges in the lower courts may seem legally justifiable. But viewed together, the net effect is that it is very difficult, if not nearly impossible, to reach a judgment on the merits in a case concerning claims of racial discrimination in subprime lending. This aggregate outcome is hard to justify given the widespread and widely known harms that have been perpetuated against communities of color and the cities that house them.

This is precisely why efforts by municipalities, such as the one the City of Miami advances here, are so

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statistical evidence of average disparities will not suffice to meet Rule 23(a)'s commonality requirement").

[11] Leave to appeal denied in *Barrett v. Option One Mortg. Corp.*, 2013 WL 7137776 (1st Cir. Feb. 07, 2013).

critical. In the wake of the financial crisis and its devastating impact on communities of color, Atlanta-area counties, Chicago-area counties, Los Angeles, and Memphis, have brought litigation under the FHA alleging racial discrimination by financial institutions. Several lower courts have recognized that these cities have in fact suffered the impact of discriminatory lending in the form of reduced property taxes, diminished property values, and costs associated with foreclosure, among other harms. As a result, several lower courts have denied lenders' motions to dismiss, and found that these cities and counties do indeed have standing consistent with the plain meaning of the FHA.[12]

Municipal standing is both legally correct and functionally significant. Municipal litigation presents a finite means of avoiding the procedural barriers that plague individual and class actions in this particular area, and balances the need to have circumscribed, localized cases, while still addressing troubling instances of lending discrimination. *See* Resp.'s Br. (BOA), at 11-12 (explaining that through the use of regression analysis, Miami "was able to separate out the effect of other potential causes so that its claims

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[12] *See Dekalb Cty. v. HSBC N. Am. Holdings, Inc.*, 2013 WL 7874104, at *17 (N.D. Ga. Sept. 25, 2013) (denying bank's motion to dismiss); *City of Los Angeles v. Wells Fargo & Co.*, 22 F. Supp. 3d 1047 (C.D. Cal. 2014) (denying bank's motion to dismiss); *City of Memphis v. Wells Fargo Bank, N.A.*, 2011 WL 1706756 (W.D. Tenn. May 4, 2011); *City of Los Angeles v. Bank of Am. Corp.*, 2014 WL 2770083, at *13 (C.D. Cal. June 12, 2014) (finding that a city has standing under FHA; denying lender's motion to dismiss); *Cty. of Cook v. HSBC N. Am. Holdings Inc.*, 136 F Supp. 3d 952 (N.D. Ill. 2015) (denying bank's motion to dismiss); *Mayor & City Council of Balt. v. Wells Fargo Bank, N.A.*, 2011 WL 1557759, at *1 (D. Md. Apr. 22, 2011) (denying Wells Fargo's motion to dismiss).

were limited to . . . the harms [discriminatory loans] caused").

Moreover, cities and municipalities have long been a special focus of the FHA and been treated as unique actors in advancing fair housing and integration through various means.

Historically, problems and solutions situated in cities were a key impetus for enacting the FHA. Dr. Martin Luther King, Jr., highlighted how "[e]very city in our country has [a] kind of dualism, [a] schizophrenia, split at so many parts, and so every city ends up being two cities rather than one." Rev. Martin Luther King, Jr., *The Other America*, Grosse Pointe Human Relations Council (Mar. 14, 1968). In the wake of Dr. King's tragic assassination, President Lyndon Johnson exhorted the House to pass the FHA as a tribute to Dr. King. Senator Walter Mondale, a principal sponsor of the legislation, specifically pointed to the harms at issue in this case in demanding federal legislation: Discrimination in cities wrought "destruction of our urban centers by . . . a declining tax base, and the ruin brought by absentee ownership of property." 114 Cong. Rec. 2993 (1968).

Today, cities continue to have a special interest in promoting non-discrimination and fostering integration. The U.S. Conference of Mayors, representing over 1,400 cities across the nation, recently reaffirmed "all cities have a stake in making non-discrimination in . . . housing a legislative priority to enhance productivity, economic development, and human capital." *See* Adopted Resolutions, The U.S. Conference of Mayors, 81st Annual Meeting (June 21-24, 2013) at 33, http://usmayors.org/resolutions/81st_Conference/resolutions-adopted.pdf (hereinafter "Mayors Resolutions 2013").

Likewise, this Court has recognized cities' unique underlying interests here, explaining that "'there can be no question about the importance" to a community of "promoting stable, racially integrated housing." *Gladstone*, 441 U.S. at 111 (citation omitted); *see also id.* (explaining that when FHA violations deprive a village "of its racial[ly integrated] balance and stability, the village has standing to challenge the legality of that conduct."). *Id* at 93.

Accordingly, when housing discrimination does occur, cities experience special injuries. Most recently, a group of 23 cities and counties explained to this Court how predatory lending distinctly injures municipalities. Amicus Br. of San Francisco, et al., *Inclusive Communities Project*, at 26. The City of Miami's merits brief reiterates why these unique harms are so problematic to communities in south Florida. *See* Resp. Br. (WF) at 2 (diminished tax revenues "divert[] law enforcement, fire department, and building and safety efforts"); *id.* at 22 (predatory lending "directly harm[s] the City's fair housing efforts and deprive[s] it of the benefits of an integrated community by blighting neighborhoods and discouraging an influx of diverse residents.").

Consistent with their exceptional stake in fair housing, cities create and promote unique fair housing programs and benefits. For example, Miami established a Department of Community and Economic Development, which is responsible, *inter alia*, for "operating the City's fair housing program, reducing illegal housing discrimination, [and] monitoring and investigating fair housing complaints. . . ." Resp. Br. (WF) at 36 (citation omitted). *See generally*, City of Miami, Dep't of Cmty. & Econ. Dev., *About Us*, http://www.ci.miami.fl.us/communitydevelopment/pages/about_us/ (last visited

Oct. 5, 2016). Through initiatives and policies like these, "[c]ities across the country are engaged in combatting discrimination, resolving complaints, remediating neighborhoods." Resp. Br. (WF) at 2. These measures yield concrete dividends for the local community and economy, since "all cities can benefit from a more stable economy flowing from . . . the housing market." Mayors Resolutions 2013 at 33.

Cities can also seek and implement special forms of relief. Indeed, just as a city government can provide prophylactic community-wide fair housing programs and services – they are exceptionally positioned to offer palliative city-wide remedies once discrimination and damage have already occurred. For example, cities can offer foreclosure relief programs to alleviate wide-scale problems. *See* Steve Walker, City of Seattle, *Foreclosure Prevention*, http://www.seattle.gov/housing/homeowners/foreclosure-prevention (last visited Oct. 5, 2016). By bringing an action under the FHA, cities are also able to obtain compensatory or punitive damages that can, in turn, fund grants, government aid, investigations, or other systematic efforts to redress housing discrimination.

At bottom, Petitioners cannot wipe the slate clean of all the significant factors bearing upon this case by simply invoking "absurd consequences." While "absurd consequences" can be a relevant factor, it is not an open invitation to inject unmoored policy preferences or economic theories. Rather, the "absurd consequences" analysis, where pertinent, is directly linked to legislative purpose. *Supra* at 6.[13]

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[13] *See also Resolution Trust Corp. v. Westgate Partners, Ltd.*, 937 F.2d 526, 529 (10th Cir. 1991) ("The 'absurdity' exception to the plain language rule is a tool to be used to carry out Congress' intent—not to override it . . . "); *Merritt v. Dillard Paper Co.*, 120

Additionally, "absurd consequences" is often interwoven with broader considerations of justice and fairness. *See e.g., Sorrells v. United States*, 287 U.S. 435, 450 (1932) (considering "absurd or glaringly unjust results, foreign to the legislative purpose"); *Holy Trinity Church*, 143 U.S. at 461 (considering "injustice, oppression, or . . . absurd consequence[s]").

There is nothing absurd about maintaining the special stake cities have in combating housing discrimination, which Congress recognized in enacting the FHA. In a sense, it is Petitioners' position that is more "absurd" here, since it would obstruct municipalities' unique interests and important efforts in fair housing.

Moreover, there is a real risk of "glaringly unjust results" underlying this case, were Petitioners to categorically block cities from pursuing FHA violations. The net effect would be troubling: That no plaintiff would be able to meaningfully seek relief from financial institutions for the well-documented discrimination that ravaged the Miami housing market. This would also send an ominous signal in terms of advancing the purposes of the FHA and deterring future violations. Ultimately, the promise of accountability remains critical, especially for African American communities that suffered serious and lasting damage due to predatory lending. The City of

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F.3d 1181, 1188 (11th Cir. 1997) ("Though venerable, the [absuridity] principle is rarely applied, because . . . [o]therwise, clearly expressed legislative decisions would be subject to the policy predilections of judges."); *Landstar Exp. Am., Inc. v. Fed. Mar. Comm'n*, 569 F.3d 493, 498–99 (D.C. Cir. 2009) ("A statutory outcome is absurd if it defies rationality. . . [and yields] an outcome so contrary to perceived social values that Congress could not have 'intended' it") (citation and internal quotations omitted).

Miami and other municipalities have opened a necessary door for relief that this Court should not shut.

CONCLUSION

For the foregoing reasons, the Court should affirm the decisions of the Eleventh Circuit.

Respectfully submitted,

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